

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING ARTICLE IV (HOTEL OCCUPANCY TAX) OF CHAPTER 74 (TAXATION) BY (I) AMENDING SECTION 74-104 (REPORTS; PAYMENTS; FEES) TO REMOVE THE RIGHT TO DEDUCT A PORTION OF THE HOTEL OCCUPANCY TAX COLLECTED BY A PERSON COLLECTING THE TAX, (II) AMENDING SECTION 74-105 (RULES AND REGULATIONS) TO PROVIDE FOR AN ASSESSMENT OF HOTEL OCCUPANCY TAX IF A TAX REPORT OR PAYMENT IS NOT MADE AND THAT THE ASSESSMENT WILL BE LIEN AGAINST THE HOTEL PROPERTY, (III) AMENDING SECTION 74-106 (PENALTIES) BY MAKING IT AN OFFENSE TO FAIL TO FILE A HOTEL OCCUPANCY TAX REPORT, BY ADDING A FINE NOT TO EXCEED \$100 FOR FAILURE TO MAKE BOOKS AND RECORDS AVAILABLE FOR REVIEW, BY PROVIDING FOR A PENALTY OF 50% OF THE TAX DUE FOR DESTRUCTION OR FRAUD PERTAINING TO HOTEL OCCUPANCY TAX RECORDS, AND A PROVISION THAT A PERSON IS LIABLE FOR ATTORNEY'S FEES INCURRED BY THE TOWN IN ENFORCING HOTEL OCCUPANCY TAX ORDINANCE PROVISIONS, (IV) ADDING A NEW SECTION 74-108 PERTAINING TO CERTIFICATES, RECORDS AND/OR DOCUMENTATION AS MAY BE REQUIRED BY THE DIRECTOR OF FINANCE FROM A PERSON REQUIRED TO COLLECT THE HOTEL OCCUPANCY TAX STATING AND SUPPORTING THE QUALIFICATION FOR AN EXEMPTION FROM OR NON-IMPOSITION OF THE HOTEL OCCUPANCY TAX, AND (V) MAKING OTHER CHANGES RELATED TO THE FOREGOING; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas ("City") is a home rule municipality having the full power of local self-government pursuant to its Charter and Article XI, Section 5 of the Texas Constitution; and

**WHEREAS**, the City levies a hotel occupancy tax as set forth in Article IV (Hotel Occupancy Tax) of Chapter 74 (Taxation) of the City's Code of Ordinances; and

**WHEREAS**, Article IV of Chapter 74 requires, among other things, that each person required to collect the hotel occupancy tax must file a monthly report with the Town's director of finance that shows (a) the consideration paid for all occupancies in the prior month, (b) the amount of taxes collected on the occupancies, and (c) other information as the director may reasonably require; and

**WHEREAS**, Article IV of Chapter 74 further provides that the director of finance has power to make any rules and regulations necessary to effectively collect the tax; and

**WHEREAS**, the City Council desires to amend Article IV of Chapter 74 regarding certificates, records, and/or documentation the City may require to support or substantiate an exemption from the payment of the hotel occupancy tax, and to make other changes to Article IV of Chapter 74 as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances ("Code") of the Town of Addison, Texas ("City") is hereby amended by amending Chapter 74 (Taxation), Article IV (Hotel Occupancy Tax) thereof as set forth in Exhibit A attached hereto and incorporated herein and made a part hereof.

Section 3. Savings. Except as amended hereby, the Code of Ordinances is not amended. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 4. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication as required by law, including but not limited to the City Charter and ordinances.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By:\_\_\_\_\_  
Chelsea Gonzalez, City Secretary

APPROVED AS TO FORM:

By:\_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

Chapter 74 (Taxation), Article IV (Hotel Occupancy Tax) of the Code of Ordinances (the "Code") of the Town of Addison, Texas is hereby amended in various sections thereof as set forth below and as follows (additions are underlined; deletions are ~~struck through~~):

1. Section 74-104 of the Code is amended to read as follows:

**Sec. 74-104. - Reports; payments; fees.**

(a) ~~No later than~~On the 20<sup>th</sup> day of the month following each month in which a tax is earned, every person required by this article to collect the tax shall file a report with the director showing:

- (1) The consideration paid for all occupancies in the preceding month;
- (2) The amount of the tax collected on the occupancies; and
- (3) Any other information the director may reasonably require.

(b) Every person required by this article to collect the tax shall pay the tax due on all occupancies in the preceding month to the director at the time of filing the report required under subsection (a) of this section.

(c) ~~Every person collecting a tax under this article may deduct one percent from the gross tax collected on all occupancies in the preceding month as a collection fee if the tax is paid to and received by the director no later than the 25<sup>th</sup> day of the month following the month in which the tax is earned. If the tax is paid by mail, the date of receipt by the director shall be the date postmarked by the United States Postal Service.~~

2. Section 74-105 of the Code is amended to read as follows:

**Sec. 74-105. - Rules and regulations.**

(a) The director shall have the power to make any rules and regulations necessary to effectively collect the tax levied by this article. The director shall, upon giving reasonable notice, have access to all books and records necessary to enable him to determine the correctness of any report filed as required by this article and the amount of taxes due under this article. All books and records shall be made available to the director at the hotel premises.

(b) If the operator of any hotel shall fail to file a report for any period as required by this article, or shall fail to pay the tax for any period as required by this article, then the director is hereby authorized to make an assessment of the tax for such period, either based on past history, any review of the records of the hotel, or other reasonable basis. All appropriate penalties and interest may be added to such assessed taxes. The rights and remedies of the town asserted in this section may be in addition to any criminal prosecution or civil action taken to collect such taxes.

(c) Once assessed, these taxes, together with any penalties provided by statute or other ordinances of the town, shall be a prior and superior lien on all property of the hotel, to the extent permitted by law.

(d) The assessor/collector, after making an assessment, if such taxes are not paid, may file an affidavit of unpaid taxes, or a similar document, with the appropriate county clerk, which shall give notice that such taxes are due, and that they remain unpaid.

3. Section 74-105 of the Code is amended to read as follows:

**Sec. 74-106. - Penalties.**

(a) A person commits an offense if he:

(1) Fails to collect the tax;

(2) Fails to file a report as required by this article;

(3) Fails to pay the director the tax when payment is due; or

(4) Files a false report or;

(5) Fails to provide access to all books or records as requested by the director.

(b) An offense committed under subsection (a) of this section is punishable by a fine as provided in section 1-7.

(c) In addition to any penalties imposed under subsection (b) of this section, a person failing to pay the tax to the director within the time required shall pay an additional ten percent of the tax due as a penalty. An additional ten percent of the tax due shall be paid 30 days later if the tax is not paid. The penalty provided by this subsection may never be less than \$5.00. Delinquent taxes shall draw interest at the rate of ten percent per year beginning 30 days from the date the tax is due.

(d) In addition to the penalties imposed under subsection (a) of this section, a person who fails to make all books and records accessible to the assessor-collector at the hotel premises after receiving reasonable notice (up to thirty (30) days), shall be subject to a fine not to exceed one hundred dollars (\$100.00) per day until the books and records are provided at the hotel premises.

(e) An additional penalty of fifty (50) per cent of the tax due shall be imposed if a person alters, destroys or conceals any record or document, or otherwise engages in fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit or investigation.

(f) In addition to the amount of any tax owed, a person is liable to the town for all reasonable attorney's fees incurred by the town in enforcing this article against the person and in collecting any tax owed by the person under this article.

4. A new Section 74-108 is added to the Code to read as follows:

**Section 74-108. - Certificate, Records.**

Without limiting any other provision of this article, in order to effectively collect the tax the director may require, with respect to any exemption from or non-imposition of the tax, that every person required by this article to collect the tax submit with each monthly report described by Section 74-104 a certificate or other documentation required by the director that states the qualification for an exemption or non-imposition, and any exemption or non-imposition of the tax must be supported by documentation adopted by the director.